IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7943 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI NANABHAI PATEL C/O GHANSHYAMLAL S PARIKH

Versus

COLLECTOR

Appearance:

MR BA SURTI for Petitioner

Mr. L. R. Pujari, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 28/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Surati has appeared for the petitioner and learned AGP Mr. Pujari has appeared for

the respondent authorities.

Rule. Service of rule has been waived by Mr. Pujari, learned AGP for the respondents. With the consent of the learned advocates for both the sides, the matter is taken up for final hearing today itself.

Brief facts of this petition are that the petitioner had purchased the land bearing survey No. 70/1 situate at village Nagarwada,District Vadodara in the year 1971 with restrictive conditions as per the provisions of sec. 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act" for short). It is the case of the petitioner that from 15.11.1969, the Devsthan Inami Abolition Act came in force. Hence the land which is of a religious trust and institution for public religious worship ceased to be exempted from the provisions of section 43 of the Tenancy Act. It is the case of the petitioner that the petitioner made an application being Tenancy Case No. 87 of 1998/70-O before the Agricultural Commission namely Mamlatdar for getting exemption under section 43 of the Tenancy Act which came to be allowed by the Mamlatdar by his order dated 31.12.1998. Thereafter, the Collector, in exercise of the revisional powers under section 76A of the Tenancy Act, issued show cause notice and after making necessary inquiry, passed order dated 31.3.2000 and confirmed the order passed by the Mamlatdar on 31.12.1998. Thereafter, the petitioner made an application for NA Permission under section 65 of the Land Revenue Code before the Collector, Vadodara which came to be dismissed by the Collector, Vadodara by his order dated 3.7.2000. Feeling aggrieved by the said order of the Collector dated 3.7.2000, the petitioner has approached this court by way of this petition under Article 226 and 227 of the Constitution of India. Said order is at page 55 and 56 of this petition.

Learned advocate Mr. Surati has submitted that the said application for NA Permission has been rejected by the Collector only on the ground that decision has been taken to file revision application before the Gujarat Revenue Tribunal, Ahmedabad against the order of the Mamlatdar and ALT Vadodara dated 31.12.1998 which has been confirmed by the Dy. Collector vide his order dated 31.3.2000 and on this sole ground, the application for NA Permission has been rejected. He has made a statement at the Bar that till this date, no notice has been received by the petitioner from the Gujarat Revenue Tribunal, Ahmedabad in the revision proceedings. According to him, no such revision application has been filed by the State

Government against the said orders of the Mamlatdar & ALT as well as the orders of the Dy. Collector confirming those orders of the Mamlatdar. He has submitted that the ground on which the application has been rejected is erroneous and contrary to law. He has further submitted that there is no stay operating against the orders of the Mamlatdar and Dy. Collector and, therefore, the Collector ought not to have rejected the said application for NA Permission and the petitioners are, as a matter of right for NA Permission if they are otherwise eligible for NA Permission in accordance with law. He has pointed out the letter of the Dy. Secretary Revenue Department, Government of Gujarat dated 12.1.2000 (page 31 of the petition) wherein some guidance has been given in respect of the matters relating to section 70((o) of the Tenancy Act and has submitted that in view of the legal position and also in view of the fact that till this date, no revision application has been filed, the Collector ought not to have rejected the application for NA Permission on such ground. He has, therefore, submitted that the Collector, Vadodara is required to be directed to reconsider the application of the petitioner for NA Permission dated 1st May, 2000 within some stipulated period.

Learned AGP Mr. Pujari has submitted that if the revision application is not filed till this date against the orders of the Mamlatdar and Deputy Collector, then, the Collector may be directed to reconsider the application dated 1st May, 2000 submitted by the petitioner for getting NA Permission in respect of the land in question.

Considering the facts and circumstances of the case, and having gone through the impugned order passed by the Collector, it is clear that the application for NA Permission has been rejected only on the ground as aforesaid. I am, therefore, of the view that it would be just and proper to direct the Collector to reconsider the application of the petitioner for NA Permission in accordance with law without being influenced by the decision of the Government to prefer revision against the orders of the Mamlatdar and Deputy Collector, if no revision is preferred so far against those orders. If such directions are issued, it would met ends of justice. Therefore, following order is passed.

This petition is allowed. The order dated 3rd July, 2000 passed by the Collector rejecting application for NA Permission is quashed and set aside and the respondent Collector is directed to reconsider the said

application in accordance with law within one month from the date of receipt of certified copy of this order after hearing the petitioner. It is further made clear that the District Collector, Baroda will not take into consideration the fact that the decision has been taken by the Government to file revision application before the Gujarat Revenue Tribunal against two orders dated 31.12.1998 and 31.3.2000 passed by the Mamlatdar as well as the Deputy Collector and shall reconsider and decide the said application strictly in accordance with law. Rule is made absolute to the above extent with no order as to costs.

28.9.2000 (H.K.Rathod,J.)

Vyas